

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

STATE OF MISSOURI, ex rel.  
JEREMIAH W. (JAY) NIXON,  
Attorney General,

Petitioner,

v.

WASHINGTON UNIVERSITY  
IN ST. LOUIS,

Respondent.

Case No.

Division No.

12

07CC-001658

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CIRCUIT COURT OF  
ST. LOUIS COUNTY

**STIPULATION AND ASSURANCE OF VOLUNTARY COMPLIANCE**

COME NOW Petitioner State of Missouri, at the relation of Attorney General Jeremiah W. (Jay) Nixon, by and through his assistant, (Attorney General) and Respondent Washington University in St. Louis (University), and hereby stipulate and agree to the following:

**ASSURANCE OF VOLUNTARY COMPLIANCE**

WHEREAS the Attorney General has commenced an investigation pursuant to Chapter 407 RSMo., the Missouri Merchandising Practices Act, into practices related to higher education loans offered to students and parents (the "Investigation");

WHEREAS in the course of the Investigation the Attorney General reviewed extensive evidence;

WHEREAS the University has cooperated in the Investigation by producing evidence and answering questions relevant to the Investigation;

WHEREAS, as set forth in the findings of fact ("Findings") below, the Attorney General asserts that its Investigation has revealed that many institutions of higher education and lenders

that provide loans to or on behalf of students of those institutions have engaged in certain acts, practices and omissions that violated the Missouri Merchandising Practices Act;

WHEREAS, as set forth below in section I(B), the Attorney General alleges that the University has engaged in certain of the practices that violate these statutes;

WHEREAS the University does not admit, and expressly denies, that its conduct constituted any violation of law;

WHEREAS the University has advised the Attorney General of its desire to resolve the Investigation through this Agreement on Code of Conduct (the "Agreement");

WHEREAS the University, without admitting the Attorney General's Findings and assertions made below or admitting any violation of law and to avoid the costs and expenses of further proceedings, has agreed to alter its practices with respect to education loans, and to adopt a Code of Conduct for education loan practices;

NOW THEREFORE, the Attorney General, based upon the Investigation, makes the following Findings:

### **FINDINGS OF THE ATTORNEY GENERAL**

#### **A. Industry-Wide Findings**

The Investigation has covered many lenders and institutions of higher education. Based on the Investigation, the Attorney General makes the following findings as to common practices found throughout the higher education loan industry.

1. Many students and their families are unable to pay all of the expenses appurtenant to higher education. In addition to grants, scholarships and work-study programs, significant numbers of students and their parents turn to loans to cover what they cannot otherwise afford to pay. Higher education loans constitute an \$85 billion per year industry.

2. Higher education loans take several forms. By dollar amount, most loans are borrowed by students themselves and are federally regulated and guaranteed. The federal government has created a program for providing loans, known as "Stafford Loans," to students.

The interest rate for Stafford Loans is set by the federal government. Lenders, however, have wide latitude in offering benefits to borrowers, including discounts off of that interest rate.

3. Other federal loans, known as "PLUS Loans" are offered to students' parents to cover higher education expenses incurred by their children and to graduate students. Like Stafford Loans, the federal government sets the interest rates for PLUS Loans and lenders have wide latitude in offering borrower benefits.

4. In addition to the federal loans described above, parents or students can obtain private "alternative loans" to cover educational expenses not covered by other financial aid. The federal government does not sponsor, subsidize or guarantee alternative loans. Accordingly, the interest rate and other terms of the loans are determined by the borrower's creditworthiness and market forces.

*i. "Preferred Lender" Lists*

5. In response to the staggering array of lenders that offer each of the various types of education loans, some institutions of higher education have created lists of recommended lenders. Institutions of higher education that use such lists usually have separate lists for each of the several types of education loans available. In some instances, such lender lists contain dozens of potential lenders that meet certain minimal requirements. In other cases, institutions of higher education use the lists to recommend a handful of lenders, or even a single lender, as "preferred."

6. The lenders listed on an institution of higher education's list of preferred lenders typically receive up to 90% of the loans taken out by the institution's students and their parents.

Despite the significant role that these lists play in determining the lenders from which students and parents borrow, many institutions did not inform their student and parent borrowers about the process and criteria used to formulate the lists of recommended or preferred lenders. Nor did they disclose the potential conflicts of interest on the part of their financial aid offices, which typically compile the preferred lender lists. These conflicts of interest may arise from:

lender-funded travel expenses for institutions' financial aid officials to attend meetings and seminars in attractive locations; the appointment of the institutions' financial aid officials to "Boards" or "Committees" sponsored by the lenders; the lenders' provision of staff and services to the institutions; the lenders' provision of "Opportunity Loans;" and revenue sharing. These practices are described below.

*ii. Revenue Sharing*

7. In the context of the education loan business, revenue sharing refers to an arrangement whereby a lender pays an institution of higher education a percentage of the principal of each loan directed toward the lender from a borrower at the institution, often in exchange for the institution of higher education placing the given lender on the institution of higher education's preferred lender lists. This type of arrangement is prohibited by federal regulation in the context of Stafford Loans, PLUS Loans and other federal loan programs; it occurs only in the alternative loan segment of the industry.

8. The practice of revenue sharing creates a conflict of interest on the part of the institutions of higher education. When and if the institutions direct students to lenders, they should do so based solely on the best interests of the student and parents who may take out loans from the lenders; yet, the institutions have a financial interest in the selection of the lenders by the student and parents. If the student and parents select a lender with which the institution has a

revenue sharing contract – even if another lender or other financial aid resource would be more suitable for the student or parents – the institution receives a financial benefit.

*iii. Denial of Choice of Lender*

9. Some institutions of higher education have neglected to make clear that borrowers have a right to select the Stafford Loan and PLUS Loan lender of their choice, irrespective of whether the lender appears on any preferred lender lists. In the most egregious cases, institutions have gone so far as to abrogate this right, by stating or strongly implying that the student and parents were limited to the lenders on the list, or even to a single lender.

*iv. Exclusive Consolidation Loan Marketing Agreements*

10. Former students may wish to combine their various education loans into a single package, called a “consolidation loan.” Some institutions of higher education have entered into agreements with the providers of such consolidation loans pursuant to which the institution agrees to encourage its former students to consolidate the former students’ loans with a particular lender and no other. In exchange, the institution secures revenue sharing or other benefits that inure directly or indirectly to the institution rather than the borrower. Once again, the institution is in a conflicted position because its advice and encouragement may be influenced by its financial self-interest.

*v. Undisclosed Sales of Loans to Another Lender*

11. In many instances, institutions of higher education place several lenders on the institutions’ lists of preferred lenders causing the potential borrower to think that the lender list represents a real choice of options. But, the choice is illusory when, as sometimes occurs, all or a number of the lenders on a lender list have arranged with each other to sell any loans to one of the lenders immediately after one of the other complicit lenders disburses a loan.

*vi. Opportunity Loans*

12. Lenders have entered into undisclosed agreements with institutions of higher education to provide what are referred to as "Opportunity Loans." These agreements provide that the lender will make loans up to a specified aggregate amount to students with poor or no credit history, or international students, who the lender claims would otherwise not be eligible for the lender's alternative loan program. In exchange for the lender's commitment to make such loans, the institution may provide concessions or promises to the lender that may prejudice other borrowers.

**B. Findings as to the University**

13. The University is an institution of higher education located in St. Louis, Missouri. The University is a corporation established by Act of the General Assembly of the State of Missouri approved February 22, 1853 and acts amendatory thereto.

14. On August 19, 2005, University signed an agreement with Education Finance Partners ("EFP") that included a revenue-sharing provision. The University did not agree to place EFP on a preferred lender list and did not agree to exclusively promote EFP to University students. The term of the agreement was from April 1, 2005 through March 31, 2006. The University allowed the agreement to lapse on March 31, 2006 and did not renew it. Only three University students obtained loans from EFP during that period of time. The total loan volume was \$24,250. The University did not receive any income under the agreement.

15. Although University has not promulgated a formal "preferred lender list," it has from time to time recommended specific lenders for different student loan programs. In doing so, University did not formally develop or communicate the processes and criteria it used to identify the specific lenders it believed would best serve the needs of its students and their families.

University's informal process for identifying the lenders it suggested to students included factors such as the servicing agent, repayment terms and customer service; it did not include inquiry into whether suggested lenders had arrangements to sell their student loans to other commercial lenders. University posted links on its website to various non-profit, governmental agencies, and commercial lenders where students could complete an electronic master promissory note.

16. At University's request, the Illinois Designated Account Purchase Program ("IDAPP"), a state agency that is a non-profit student loan lender and a party to University's School as Lender contract, agreed to make private loan funds available to international students who often find it difficult to arrange tuition financing in the United States.

17. In some cases, IDAPP and the Missouri Higher Education Loan Authority (MOHELA), both state non-profit student loan lenders, paid costs associated with development of an informational website and printing of informational materials sent to University's current and prospective students; and provided exit counseling for students.

### **C. Violations**

18. The Attorney General alleges that the acts, practices, and omissions set forth herein on the part of the University created a conflict of interest and violated the Missouri Merchandising Practices Act. The University denies this assertion.

IT NOW APPEARING THAT the University, while it denies any conflict of interest or violation of the laws cited in this Agreement, desires to settle and resolve the Investigation without admitting the Attorney General's Findings;

AND IT FURTHER APPEARING THAT the University agrees to accept a Code of Conduct promulgated by the Attorney General for institutions of higher education involved in

providing and servicing education loans or advising students or their parents with respect to education loans;

NOW, THEREFORE, the Attorney General and the University hereby enter into the assurance of voluntary compliance, pursuant to § 407.030 RSMo., as follows:

### **CODE OF CONDUCT**

#### *i. Prohibition of Certain Remuneration to University Employees*

19. The University shall require and ensure that no officer, trustee, director, employee, or agent of the University accepts anything of more than nominal value on his or her own behalf or on behalf of another from or on behalf of a Lending Institution, except that this provision shall not be construed to prohibit any officer, trustee, director, employee, or agent of the University from conducting (a) non-University business with any Lending Institution; or (b) University business unrelated to education loans. As used in the preceding sentence and throughout the Agreement, a Lending Institution is defined as:

(a) Any entity that itself or through an affiliate engages in the business of making loans to students, parents or others for purposes of financing higher education expenses or that securitizes such loans; or

(b) Any entity, or association of entities, that guarantees education loans; or

(c) Any industry, trade or professional association that, to the best of University's knowledge after reasonable inquiry, receives money from any entity described above in subsections a and b.

Nothing in this provision or throughout the Agreement shall prevent the University from holding membership in any nonprofit professional association.



20. The prohibition set forth in the previous paragraph shall include, but not be limited to, a ban on any payment or reimbursement by a Lending Institution to a University employee for lodging, meals, or travel to conferences or training seminars unless such payment or reimbursement is related solely to non-University business or University business unrelated to education loans.

*ii. Limitations on University Employees Participating on Lender Advisory Boards*

21. The University shall prohibit any officer, trustee, director, employee, or agent of the University from receiving any remuneration for serving as a member or participant of an advisory board of a Lending Institution, or receiving any reimbursement of expenses for so serving, provided, however, that participation on advisory boards that are unrelated in any way to higher education loans shall not be prohibited by the Agreement.

*iii. Prohibition of Certain Remuneration to the University*

22. The University may not accept on its own behalf anything of value from any Lending Institution in exchange for any advantage or consideration provided to the Lending Institution related to its education loan activity. This prohibition shall include, but not be limited to, (i) “revenue sharing” by a Lending Institution with the University, (ii) the University’s receipt from any Lending Institution of any computer hardware for which the University pays below-market prices and (iii) printing costs or services. Notwithstanding anything else in this paragraph, the University may accept assistance as contemplated in 34 CFR 682.200(b)(definition of “Lender”)(5)(i).

*iv. Preferred Lender Lists*

23. In the event that the University promulgates a list of preferred or recommended lenders or similar ranking or designation (“Preferred Lender List”), then

(a) Every brochure, web page or other document that sets forth a Preferred Lender List must clearly disclose the process by which the University selected lenders for said Preferred Lender List, including but not limited to the criteria used in compiling said list and the relative importance of those criteria; and

(b) Every brochure, web page or other document that sets forth a Preferred Lender List or identifies any lender as being on said Preferred lender List shall state in the same font and same manner as the predominant text on the document that students and their parents have the right and ability to select the education loan provider of their choice, are not required to use any of the lenders on said Preferred Lender List, and will suffer no penalty for choosing a lender that is not on said Preferred Lender List.

(c) The University's decision to include a Lending Institution on any such list and the University's decision as to where on the list the Lending Institution's name appears shall be determined solely by consideration of the best interests of the students or parents who may use said list without regard to the pecuniary interests of the University;

(d) The constitution of any Preferred Lender List shall be reviewed no less than annually;

(e) No Lending Institution shall be placed on any Preferred Lender List unless the said lender provides assurance to the University and to student and parent borrowers who take out loans from said Lending Institution that the advertised benefits upon repayment will continue to inure to the benefit of student and parent borrowers regardless of whether the Lending Institution's loan are sold;

(f) No Lending Institution that, to the best of University's knowledge after

reasonable inquiry, has an agreement to sell its loans to another unaffiliated Lending Institution shall be included on any Preferred Lender List unless such agreement is disclosed therein in the same font and same manner as the predominant text on the document in which the Preferred Lender List appears;

(g) No Lending Institution shall be placed on any one of the University's Preferred Lender Lists or in favored placement on any one of the University's Preferred Lender Lists for a particular type of loan, in exchange for benefits provided to the University or to the University's students in connection with a different type of loan;

*v. Prohibition of Lending Institutions' Staffing of University Financial Aid Offices*

24. The University may not allow and shall ensure that no employee or other agent of a Lending Institution is ever identified to students or prospective students of the University or their parents as an employee or agent of the University. No employee or other agent of a Lending Institution may staff the University financial aid offices at any time.

*vi. Proper Execution of Master Promissory Notes*

25. The University shall not link or otherwise direct potential borrowers to any electronic Master Promissory Notes or other loan agreements that do not allow students to enter the lender code or name for any lender offering the relevant loan.

*vii. School as Lender*

26. If the University participates in the "School as Lender" program under 20 U.S.C. § 1085(d)(1)(E), the University may not treat School As Lender loans any differently than if the loans originated directly from another lender; all sections of the Agreement apply equally to such School as Lender loans as if the loans were provided by another lender.

*viii. Prohibition of Opportunity Loans*

27. The University shall not arrange with a Lending Institution to provide any Opportunity Loans as defined above if the provision of such Opportunity Loans prejudices any other borrower.

### **SCOPE OF THE AGREEMENT**

28. Except as provided below, the Agreement precludes any action that the Attorney General could commence against the University and its respective current and former officers, trustees and employees for the acts, practices, and omissions listed in the Agreement; provided however, that nothing contained in the Agreement shall be construed to cover claims of any type by any other state agency or any claims that may be brought by the Attorney General to enforce the University's obligations arising from or relating to the provisions contained in the Agreement.

The Agreement shall not prejudice, waive or affect any claims, rights or remedies of the Attorney General with respect to any person, other than the University and its current and former officers, trustees and employees, all of which claims, rights, and remedies are expressly preserved, nor shall the Agreement create any rights on behalf of persons not parties to the Agreement. The Agreement does not preclude any action that the Attorney General may take for acts, practices, or omissions not listed in the Findings section of the Agreement, even if such acts, practices, or omissions constitute a part of the Investigation.

### **COOPERATION**

29. The University shall continue to cooperate fully and promptly with the Attorney General with regard to the Investigation and any related proceedings and actions. The University shall use its best efforts to ensure that all of its officers, directors, employees and agents also fully and promptly cooperate with the Attorney General in the Investigation and any related

proceedings and actions, subject to their individual rights and privileges and those of the University.

30. Cooperation shall include without limitation:

(a) Production, voluntarily and without service of subpoena, by the University of any information and all documents or other tangible evidence related to education loan practices reasonably requested by the Attorney General, and any compilations or summaries of information or data that the Attorney General reasonably requests be prepared, subject to recognized privileges and protections for confidential information;

(b) Using the University's best efforts to cause the University's officers, directors, employees and agents attend any proceedings at which the presence of any such persons is reasonably requested by the Attorney General and having such persons answer any and all inquiries that may reasonably be put by the Attorney General to any of them at any proceedings or otherwise ("proceedings" include but are not limited to any meetings, interviews, depositions, hearings, grand jury hearing, trial or other proceedings) voluntarily, and without service of a subpoena, subject to their individual rights and privileges and those of the University; and

(c) Fully, fairly and truthfully disclosing all information and producing all records and other evidence in its possession relevant to all reasonable inquiries made by the Attorney General in connection with this Investigation concerning any alleged fraudulent or criminal conduct by anyone whatsoever about which the University, its officers, trustees, directors, employees and agents may have any knowledge or information, subject to recognized privileges and protections for confidential information.

31. In the event any document otherwise required to be provided under the terms of the Agreement is withheld or redacted on grounds of privilege, work-product or other legal doctrine, a statement shall be submitted in writing by the University indicating: the type of document; the date of the document; the author and recipient of the document; the general subject matter of the document; the reason for withholding the document; and the Bates number or range of the withheld document. The Attorney General may challenge such claim in any forum of its choice and may, without limitation, rely on all documents or communications theretofore produced or the contents of which have been described by the University, its officers, directors, employees, or agents.

32. The University shall not knowingly jeopardize the confidentiality of any aspect of the Investigation, including sharing or disclosing evidence, documents, or other information with others during the course of the investigation without the consent of the Attorney General. Nothing herein shall prevent the University from conferring with counsel or consultants, issuing public statements, from providing such evidence or information to other regulators or as otherwise required by law.

#### **MISCELLANEOUS PROVISIONS**

33. This Assurance of Voluntary Compliance, hereinafter AAVC,@ shall apply to Washington University in St. Louis and any other names under which it now does business or will in the future do business. This AVC also applies to each and every agent, representative, employee, and any other individual acting on behalf of, or at the direction of, the University

34. This AVC has been entered into and executed by and between the State of Missouri and the University to resolve a contested dispute in which the State of Missouri alleged that the University has violated Chapter 407 RSMo, commonly known as the Missouri Merchandising

Practices Act. The Attorney General alleges that the University violated the Act through its use, as more fully set forth herein, of "preferred lender lists." The University denies these allegations and enters into this agreement without making any admission of fault. Nothing in this AVC shall be construed as excusing or forgiving current or future noncompliance with any of Missouri=s laws, or requiring the Attorney General to forgo pursuit by any legal means of any other violation of any state law.

35. This Court has jurisdiction over the parties and subject matter of this AVC pursuant to § 407.030, RSMo 2000.

36. This AVC is entered into pursuant to the laws of the State of Missouri and shall be governed by and construed in accordance with the same.

37. The University shall not represent to any person, natural or otherwise, that the Attorney General sanctions, endorses, or approves of any methods, acts, uses, practices, or solicitations undertaken by or on behalf of the University.

38. This AVC shall not be revised unless such revisions are made in writing and signed by all parties hereto.

39. This AVC embodies the entire and exclusive agreement and understanding of the parties hereto with respect to the subject matter contained herein. The terms of this agreement supersede all previous notes, conversations, and agreements, express or implied.

40. The Attorney General may seek enforcement of this AVC at any time. Further proceedings may include, but are not limited to, an action to obtain a civil penalty pursuant to § 407.030, RSMo 2000, or an action otherwise authorized by § 407.100, RSMo 2000.

41. If the University materially breaches any of the obligations described herein, the Attorney General may in its sole discretion terminate the Agreement upon written notice to the

University. In such event, any statute of limitations or other time-related defense applicable to the subject of the Agreement and any claims arising from or relating thereto are tolled from and after the last execution date of the Agreement and the Agreement shall in no way bar or otherwise preclude the Attorney General from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Investigation, against the University or from using in any way any statements, documents or other materials produced or provided by the University after commencement of the Investigation, including, without limitation, any statements, documents or other materials provided for purposes of settlement negotiations.

42. No failure or delay by the Attorney General in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein shall be cumulative.

43. The University enters into the Agreement voluntarily and represents that no threats, offers, promises or inducements of any kind have been made by the Attorney General or any member, officer, employee, agent or representative of the Attorney General to induce the University to enter into the Agreement other than as described herein.

44. The Agreement may be changed, amended or modified only by a writing signed by all parties hereto.

45. The Agreement constitutes the entire agreement between the Attorney General and the University and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of the Agreement.

46. The Agreement shall be binding upon the University and its successors, assigns, and/or purchasers of all or substantially all its assets.



47. The Agreement and its provisions shall be effective on the date that it is approved by this Court, except for the provisions contained in paragraphs 23 and 25 above, which shall become effective on June 1, 2007. However, the University shall have until November 1, 2007 to change any printed materials as required to comply with this Agreement.

48. In the event of any inconsistency between the terms of this Agreement and federal, state or local statutes, rules, regulations, guidelines or assurances of voluntary compliance with another regulatory authority ("Authorities"), the provisions of the Authorities shall prevail.

49. The Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

50. Nothing contained herein shall be construed as relieving the University of its obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of the Agreement be deemed permission to engage in any act or practice prohibited by such laws, regulations or rules.

51. The acceptance of the Agreement by the Attorney General shall not be deemed approval by the Attorney General of any of the University's business practices, and the University shall make no representation to the contrary. The University's execution of the Agreement is not an admission of liability.

52. Nothing in the Agreement shall be construed to prevent any individual from pursuing any right or remedy at law which any consumer may have against the University.

53. The University shall submit to the Attorney General, on or before August 15, 2007, an affidavit, subscribed to by an officer of the University authorized to bind the University, setting forth its compliance with the provisions of the Agreement.

54. Unless otherwise provided, all notices as required by the Agreement shall be provided as follows:

To the Attorney General

Peter Lyskowski  
Assistant Attorney General  
Office of the Missouri Attorney General  
Supreme Court Building  
P.O. Box 899  
Jefferson City, Missouri 65102  
Tel. 573-751-8366  
Fax. 573-751-2203

To the University:

Michael R. Cannon  
Executive Vice Chancellor and General Counsel  
Washington University in St. Louis  
One Brookings Drive, Campus Box 1058  
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Tel. 314-935-5152  
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**Affirmation of Compliance with Investigation.**

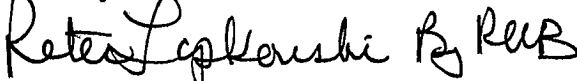
By signing below, the University affirms that it believes in good faith that its response to the Attorney General's Investigative Demand is accurate, and the document production is complete, subject to the qualifications and explanations contained in that response, and further states that the University has received no remuneration in connection with any of the practices described, alleged, and/or prohibited herein, except to the extent information described in that response could be deemed remuneration.

**Recommendation.**

Petitioner and Respondent recommend that the Court approve this AVC.

IN WITNESS THEREOF, the parties hereto have caused this AVC to be executed in their  
respective names on this 20 day of April, 2007.

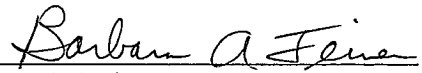
JEREMIAH W. (JAY) NIXON  
Attorney General

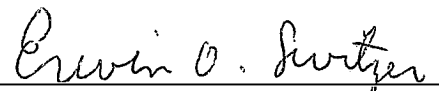
  
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